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No. 97-1004

In The

Supreme Court of the United States

October Term, 1997

MALEK AHMED,

Petitioner,

v.

CHARLES GREENWOOD and
MORTGAGE GUARANTEE AND TITLE COMPANY,

Respondents.

**On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The First Circuit**

BRIEF OF RESPONDENT CHARLES GREENWOOD IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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25 pp

TABLE OF CONTENTS

Page

Table of Authorities iii

I. Statement of the Case 1

A. Statement of Procedural History 1

B. Statement of Facts 7

II. Argument 10

A. PLAINTIFF HAS FAILED TO ESTABLISH FOR THE UNITED STATES SUPREME COURT A BASIS UPON WHICH THE COURT COULD RELY IN GRANTING CERTIORARI JURISDICTION 10

B. PLAINTIFF IS MISTAKEN IN HIS BELIEF THAT THE FIRST CIRCUIT COURT OF APPEALS SHOULD HAVE REVIEWED HIS PROPOSED AMENDED COMPLAINT AS THOUGH IT HAD BEEN CONSIDERED BY THE RHODE ISLAND FEDERAL DISTRICT COURT UNDER A RULE 12(b)(6) STANDARD 11

C. THE FIRST CIRCUIT COURT OF APPEAL'S DECISION IN THE UNDERLYING CASE IS NOT IN CONFLICT WITH ANY DECISIONS OF OTHER UNITED STATES COURTS OF APPEAL ON ANY IMPORTANT MATTER AND AS SUCH CANNOT PROVIDE THE PETITIONER WITH GROUNDS FOR GRANT OF WRIT OF CERTIORARI 13

TABLE OF CONTENTS – Continued

Page

D. GREENWOOD OBJECTS TO SECTION III OF PLAINTIFF'S PETITION IN THAT IT CONTAINS MISSTATEMENTS OF FACT AND INAPPROPRIATE FORM..... 17

E. THE ASSERTION IN SECTION III OF PLAINTIFF'S PETITION, THAT THE RHODE ISLAND DISTRICT COURT AND THE FIRST CIRCUIT COURT OF APPEALS COMMITTED ERRONEOUS FACTUAL FINDING, DOES NOT PROVIDE A BASIS UPON WHICH THE UNITED STATES SUPREME COURT COULD RELY IN GRANTING CERTIORARI JURISDICTION 19

III. Conclusion 20

TABLE OF AUTHORITIES

Page

CASES:

Ahmed v. Rosenblatt, et al., 118 F.3d 886 (1st Cir. 1997) 5

Feinstein v. Resolution Trust Corp., 942 F.2d 34 (1st Cir. 1991) 5

First American Corp., et al. v. Sheikh Zayed Bin Sultan Al-Nahyan, et al., 948 F.Supp. 1107 (D.C. 1996) 16

Forsyth v. Hammond, 17 S.Ct. 665, 106 U.S. 506, 41 L.Ed. 1095 (1897) 13

In re: Harvard Knitwear, Inc., 153 B.R. 617 (E.D.N.Y. 1993) 16

Joseph Victori Wines, Inc. v. Vina Santa Carolina S.A., et al., 993 F.Supp. 347 (S.D.N.Y. 1996) 16

Layne & Bowler Corp. v. Western Well Works, Inc., et al., 43 S.Ct. 422, 261 U.S. 387, 67 L.Ed. 712 (1923) 14, 17

New England Data Services, Inc. v. Becher, 829 F.2d 286 (1st Cir. 1987) 5, 15

Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local No. 59 v. Super Line Transportation Company, Inc., 953 F.2d 17 (1st Cir. 1992) 12

STATUTES

18 U.S.C. § 1961 et seq. 1

29 U.S.C. § 636(B)(1) 2

TABLE OF AUTHORITIES – Continued

Page

RULES

F.R.C.P. Rule 12(b)(6) 1, 11, 12, 16, 18
F.R.C.P. Rule 9(b) 1
F.R.C.P. Rule 60(b) 3, 4, 5, 6
F.R.C.P. Rule 60(b)(1) 4
F.R.C.P. Rule 60(b)(6) 4, 6, 11, 12, 13
Sup. Ct. R. 10 .....11, 13, 14, 17, 20
Sup. Ct. R. 10(a) 14

I. STATEMENT OF THE CASE

A. Statement of Procedural History.

On or about February 17, 1995 Plaintiff Malek Ahmed (hereinafter "Plaintiff") filed a verified complaint in the United States District Court for the District of Rhode Island.[1] In his complaint, the Plaintiff alleged a violation of the Racketeer Influenced and Corrupt Organizations Act (hereinafter "RICO"), 18 U.S.C. § 1961, et seq., as well as other federal and state law claims. The verified complaint was filed by Plaintiff pro se. It names Defendant Charles Greenwood (hereinafter "Greenwood") and Defendant Mortgage Guarantee and Title Company (hereinafter "MGT") as Defendants. The complaint also named Jon Rosenblatt, Carol Rosenblatt, Irwin Loft, Capitol Center Associates Six, and William Larson as Defendants. Only Greenwood and MGT remain in this action.

Both Greenwood and MGT filed motions to dismiss the Plaintiff's original complaint alleging that it failed to state a claim upon which relief could be granted and that it failed to plead fraud with particularity. See, F.R.C.P. 12(b)(6), 9(b). Those motions were referred to the United States Magistrate Judge Robert W. Lovegreen for report and recommendation to Senior United States District Court Judge Raymond J. Pettine. The Magistrate's report was handed down on September 4, 1995.[2] The recommendation was that each count of the Plaintiff's complaint be dismissed. In reaching that decision, Lovegreen found

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[1] Pet. App. pgs. 31-43.

[2] Pet. App. pgs. 17-30.

that the Plaintiff's complaint failed to set forth the elements needed to state a cause of action under the Federal RICO Statute.[3]

The Plaintiff, acting pro se, objected to Lovegreen's report and recommendation. Subsequently, Plaintiff retained the services of Attorney Arthur E. Chatfield, III. Attorney Chatfield filed a supplemental objection to the Report and Recommendation on or about October 11, 1995.

Judge Pettine adopted the Magistrate's report and recommendation in its entirety pursuant to 29 U.S.C. § 636(B)(1).[4] Judge Pettine specifically found that the Plaintiff had failed to plead sufficiently specific facts to establish instances of mail and wire fraud, a pattern of racketeering activity, or the existence of an enterprise affecting interstate commerce.[5] The District Court determined that the Plaintiff's original verified complaint failed to adequately plead any of the elements necessary to establish a Federal RICO claim. Judge Pettine ruled that, despite being pro se, the Plaintiff still had the burden of pleading specific facts to back up his claims.[6] Even being afforded the benefit of leniency given to pro se litigants, the Plaintiff failed to meet this burden.[7] Judge Pettine dismissed the Plaintiff's original complaint on November 15, 1997.

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[3] Pet. App. pgs. 22-27.

[4] Pet. App. pgs. 14-16.

[5] *Id.*

[6] Pet. App. pg. 15.

[7] *Id.*

The Plaintiff appealed the Rhode Island District Court's Dismissal order. That appeal was docketed in the First Circuit Court of Appeals at Appeal No. 96-1145. The Plaintiff filed his brief on June 7, 1996. Immediately thereafter, and prior to Greenwood and MGT submitting their briefs, the Plaintiff filed a motion to amend his complaint, along with a proposed amended complaint, in the First Circuit Court of Appeals.[8] The Plaintiff's motion was denied by the First Circuit.[9] The Defendants filed their briefs opposing Plaintiff's original appeal in September of 1996.

The Plaintiff then filed a motion to vacate his complaint's dismissal in the Rhode Island District Court, claiming relief under each and every subsection of Rule 60(b).[10] Timely objections to the motion were filed by both Defendants.[11] On October 1, 1996 a hearing was held before Magistrate Judge Lovegreen.

The Magistrate heard arguments from all parties. The issue presented to the magistrate was whether or not Plaintiff was entitled to have the order dismissing his complaint vacated under Rule 60(b). The Magistrate issued an order from the bench finding that the Plaintiff had failed to meet the criteria under any of the subsections of the Federal Rule 60(b).[12] The Magistrate recommended denial of the Plaintiff's motion.

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[8] Pet. App. pg. 10.

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.*

In determining whether Rule 60(b)(6) applied to the Plaintiff's circumstance, the Court reviewed the Plaintiff's proposed amended complaint. The Magistrate found that despite being longer and more detailed than the Plaintiff's original verified complaint, in substance it was the same complaint that had been previously dismissed.[13] As such, Plaintiff had failed to prove to the District Court that he would be able to assert a meritorious claim sounding in RICO. Proof of the existence of a meritorious claim is a pre-condition to the grant of Rule 60(b)(6) relief.[14] In addition, the Magistrate found that the Plaintiff had failed to prove the existence of exceptional circumstances, and that both Greenwood and MGT would be prejudiced by having to assume the burden and expense of defending the case at that point in time.[15] The Plaintiff had failed to meet the preconditions and criteria necessary for relief under Federal Rule of Civil Procedure 60(b)(6) or the other subsections of Rule 60(b).

The Plaintiff objected to the Magistrate's order. The matter was transferred to Judge Pettine for review. On December 20, 1996 Judge Pettine affirmed and approved Magistrate Lovegreen's order.[16] The Plaintiff appealed the denial of Rule 60(b) relief to the First Circuit. The issues asserted in Plaintiff's second appeal were his beliefs that the dismissal of his complaint should have been vacated under Federal Rule 60(b)(1) or 60(b)(6).[17]

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[13] *Id.*

[14] Pet. App. pg. 12.

[15] Pet. App. pg. 10.

[16] *Id.*

[17] Pet. App. pgs. 10-13.

Plaintiff's second appeal, of Judge Pettine's denial of his Rule 60(b) motion, was docketed in the First Circuit Court of Appeals at Appeal No. 97-1037. Plaintiff's two appeals, 96-1145 and 97-1037, were consolidated for purposes of oral argument. The Appeals Court rendered a decision affirming both the judgments entered by the Rhode Island Federal District Court.[18] That decision, the one which this petition arises out of, is published at *Ahmed v. Rosenblatt, et al.*, 118 F.3d 886 (1st Cir. 1997).

In ruling upon Plaintiff's first appeal, the First Circuit found that the Plaintiff's original verified complaint failed to plead any of the elements needed to establish a RICO claim, including the predicate acts of mail and wire fraud,[19] that the acts were related and posed a continuous threat of criminal activity needed to prove a pattern[20] and the existence of an enterprise.[21] The First Circuit also held that the Plaintiff was not entitled to a 'second determination' under the *Becher* case [22] because there had never at any time been any indication by the Plaintiff that critical information regarding mail and wire fraud was in the sole possession of the Defendants.[23]

On the issue of pro se leniency, the Court found that the policy behind affording that leniency was to protect

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[18] Pet. App. pgs. 1-13.

[19] Pet. App. pgs. 5-7.

[20] *Id.*

[21] *Id.*

[22] *New England Data Services, Inc. v. Becher*, 829 F.2d 286 (1st Cir. 1987); *Feinstein v. Resolution Trust Corp.*, 942 F.2d 34 (1st Cir. 1991).

[23] Pet. App. pgs. 7-8.

the pro se party who had pled sufficient facts but the incorrect cause of action.[24] In that situation, the court could assist the pro se Plaintiff by correcting the defective complaint. In the Plaintiff's case, the opposite scenario was presented, Plaintiff had stated a proper cause of action, but not the facts supporting it.[25] The Court found that the Rhode Island District Court had afforded Plaintiff the appropriate leniency.[26]

In deciding Plaintiff's second appeal, the Court of Appeals reviewed the Rhode Island District Court's denial of Plaintiff's Rule 60(b) motion for an abuse of discretion.[27] The Court acknowledged that the District Court had reviewed Plaintiff's proposed amended complaint in the context of that motion.[28] The Court of Appeals found that the District Court had not abused its discretion in denying the Plaintiff's claim for relief under Rule 60(b)(6), because the Plaintiff had failed to demonstrate either a colorable RICO claim or exceptional circumstances which would have entitled him to the requested relief.[29] The court affirmed both of the District Court's judgments.

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[24] Pet. App. pgs. 8-9.

[25] *Id.*

[26] Pet. App. pg. 9.

[27] Pet. App. pgs. 23 (Ftnt. 2), 10-13.

[28] Pet. App. pgs. 2-3 (Ftnt. 2), 10.

[29] Pet. App. pgs. 11-13.

B. Statement of Facts

Plaintiff filed his original complaint in the Rhode Island District Court on February 17, 1995. Affording the Plaintiff the appropriate leniency and assuming that his allegations are true, which Defendant Greenwood has consistently maintained that they are not, the following are the facts which the Plaintiff has alleged in support of his RICO claim.

The Plaintiff's verified complaint alleges that in October of 1988 he had entered into a purchase and sale agreement with Defendant William Larson for the sale of 47 Maple Street in Providence, Rhode Island.[30] Plaintiff was the owner of that real property.[31] The agreement was contingent upon Larson obtaining financing. The Plaintiff hired Greenwood as an attorney to represent him in the sale of that property and to draft the purchase and sale agreement.[32] Larson placed a $5,000 deposit on the property, which Greenwood held in escrow for the Plaintiff's benefit.[33] On October 20, 1988, Plaintiff was notified by Larson that he would be unable to obtain financing.[34] Plaintiff alleges that he then instructed Greenwood to return the $5,000 deposit to Larson, but that he failed to do so.[35]

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[30] Pet. App. pg. 33.

[31] *Id.*

[32] *Id.*

[33] *Id.*

[34] *Id.*

[35] *Id.*

On December 16, 1988 Plaintiff entered into a second purchase and sale agreement relative to the same piece of property, 47 Maple Street.[36] The agreement was executed between the Plaintiff and Irwin Loft, who was acting as an agent of or principal for Capitol Center Associates Six (Loft Agreement).[37] It is alleged by Plaintiff that he was represented by Greenwood at that time.[38] Plaintiff received a $25,000.00 deposit when the Loft Agreement was executed.[39]

On December 19, 1988, Larson recorded the Larson Agreement in the land evidence records for the City of Providence.[40] Loft, on behalf of Capitol Center Associates Six, requested that MGT place a lien upon the real property at 47 Maple Street on December 27, 1988.[41] The lien was to secure the $25,000 given to the Plaintiff.[42] Subsequently, on March 8, 1989, Defendant Capitol Center Associates Six gave Plaintiff an additional $30,000 in "earnest money" for the purchase of 47 Maple Street.[43] The closing on the Loft Agreement took place on March 14, 1989.[44] On March 15, 1989 Larson filed a Lis Pendens against the property at 47 Maple Street based on the

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[36] Pet. App. pg. 34.

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] *Id.*

[41] *Id.*

[42] *Id.*

[43] *Id.*

[44] *Id.*

Larson Agreement.[45] On March 16, 1989, Plaintiff was informed by MGT that the closing would be voided due to the cloud Larson's lien had created on the title of 47 Maple Street.[46] Plaintiff alleges that the Loft Agreement contained a forged set of signatures which purportedly extended the time for performance of the agreement until August 1, 1989.[47] Plaintiff denies ever signing that extension.[48]

Larson sued the Plaintiff on March 18, 1989 for specific performance under the Larson Agreement.[49] It is alleged by the Plaintiff that Greenwood filed an answer on behalf of the Plaintiff before he was ever informed that he was being sued.[50]

Plaintiff alleges that on or about July 12, 1989 Greenwood and Loft requested that the Plaintiff executed a number of documents which he thought were "receipts."[51] Plaintiff received an additional $30,000.00 from Capital Center Associate Six when he signed those "documents."[52] Plaintiff alleges that he subsequently determined that those "receipts" were actually Promissory Notes and a Mortgage Deed on 47 Maple Street and two other properties then owned by the Plaintiff.[53]

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[45] *Id.*

[46] *Id.*

[47] Pet. App. pg. 36.

[48] *Id.*

[49] Pet. App. pg. 34.

[50] *Id.*

[51] Pet. App. pg. 35.

[52] *Id.*

[53] *Id.*

The notes and mortgage ran to the benefit of Loft individually and were to secure the $85,000.00 given to the Plaintiff as payment toward the purchase of 47 Maple Street.[54]

After unsuccessful attempts by Loft to foreclose upon the Plaintiff's property in both 1991 and 1992, Loft transferred the Promissory Notes and Mortgage Deed to Jon and Carol Rosenblatt.[55]

Plaintiff's verified complaint alleges that the Defendants violated the Racketeering Influenced and Corrupt Organizations Act by conspiring with one another to defraud the Plaintiff out of his interests in real property on Maple Street.[56] He further alleges that in carrying out their scheme to defraud the Plaintiff, that the Defendants committed mail and wire fraud in violation of Federal Law.[57] Defendant Greenwood denies all of the Plaintiff's allegations relative to the RICO count.

II. ARGUMENT

A. PLAINTIFF HAS FAILED TO ESTABLISH FOR THE UNITED STATES SUPREME COURT A BASIS UPON WHICH THE COURT COULD RELY IN GRANTING CERTIORARI JURISDICTION.

Plaintiff Ahmed, as Petitioner to this court for Writ of Certiorari, has the burden of clearly and concisely articulating for both the court and opposing parties the issues

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[54] *Id.*

[55] Pet. App. pgs. 36, 37.

[56] Pet. App. pgs. 37-39.

[57] Pet. App. pg. 39.

upon which he believes certiorari jurisdiction can be granted, as well as the specific facts which support those issues.[58] Plaintiff Ahmed's petition fails to meet this burden. Reading the petition, it is difficult, if not impossible, to decipher the reasoning upon which Plaintiff relies in support of his request for grant of writ of certiorari. As such, responding to Mr. Ahmed's claims is clearly attended by obstacles. Plaintiff's failure to succinctly establish understandable grounds for the granting of his petition should result in the denial of the same.

B. PLAINTIFF IS MISTAKEN IN HIS BELIEF THAT THE FIRST CIRCUIT COURT OF APPEALS SHOULD HAVE REVIEWED HIS PROPOSED AMENDED COMPLAINT AS THROUGH IT HAD BEEN CONSIDERED BY THE RHODE ISLAND FEDERAL DISTRICT COURT UNDER A RULE 12(b)(6) STANDARD.

As explained in the reply's statement of the case (supra), Plaintiff Ahmed pursued a Rule 60(b)(6) motion seeking to vacate the Rhode Island Federal District Court's dismissal of his original complaint. In support of said motion, Ahmed submitted a proposed amended complaint for the court's review. If the district court had granted the Rule 60(b)(6) motion, it was Ahmed's intent to file and proceed with the litigation based upon the proposed amended complaint.

In deciding whether to grant a Rule 60(b)(6) motion, it is incumbent upon the district court to determine the

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[58] Sup. Ct. R. 10.

existence or absence of a number of essential criteria. One of the issues that the court must resolve in deciding whether to set aside a judgment under Rule 60(b)(6) is whether the moving party possesses a potentially meritorious claim, which if proven will bring success in its wake.[59] This criteria allows the court to avoid undertaking what would otherwise turn out to be the empty exercise of reinstating a claim which is doomed to fail. The moving party must satisfy this precondition prior to being entitled to Rule 60(b)(6) relief.[60]

In applying the Rule 60(b)(6) standard to Plaintiff Ahmed's motion, the Rhode Island Federal District Court was required to review the proposed amended complaint in the context of a Rule 60(b)(6) motion.[61] The district court found that the amended complaint, although longer and more detailed than the original complaint, was in substance the same, and did not persuade the court that Ahmed's claim was potentially meritorious.[62]

Section I of Ahmed's petition to this court erroneously asserts that the district court reviewed the proposed amended complaint in the context of a Rule 12(b)(6) motion.[63] This is an attempt by the Plaintiff to have the proposed amended complaint reviewed under a de novo standard. The Plaintiff, under the law, is not

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[59] *Teamsters, Chauffeurs, Warehousemen and Helpers Union, Local No. 59 v. Super Line Transportation Company, Inc.*, 953 F.2d 17, 21 (1st Cir. 1992).

[60] *Id.*

[61] Pet. App. pgs. 2-3 (Ftnt. 2), 10-13.

[62] *Id.*; Pet. App. pgs. 10, 11-13.

[63] Petition pgs. 5-6.

entitled to such a review. Clearly, the district court reviewed the proposed amended complaint strictly in connection with its consideration of Ahmed's rule 60(b)(6) motion to vacate.[64] As such, the First Circuit appropriately reviewed the district court's denial of that motion for an abuse of discretion.[65] Plaintiff is incorrect in his assertion that the court's consideration of the motion to vacate and its examination of the amended complaint in conjunction therewith should have been reviewed on appeal under a de novo standard.

The erroneous contentions of Section I of Ahmed's petition does not provide this court with a basis upon which certiorari jurisdiction could be founded.

C. THE FIRST CIRCUIT COURT OF APPEAL'S DECISION IN THE UNDERLYING CASE IS NOT IN CONFLICT WITH ANY DECISIONS OF OTHER UNITED STATES COURTS OF APPEAL ON ANY IMPORTANT MATTER AND AS SUCH CANNOT PROVIDE THE PETITIONER WITH GROUNDS FOR GRANT OF WRIT OF CERTIORARI.

Certiorari jurisdiction of the United States Supreme Court is not available to a party as a matter of right, but rather is a matter of judicial discretion.[66] It is a power which should be exercised sparingly.[67] A Petition for Writ

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[64] Pet. App. pgs. 2-3 (Ftnt. 2), 10-13.

[65] Pet. App. pgs. 10-13.

[66] Sup. Ct. R. 10.

[67] *Forsyth v. Hammond*, 17 S.Ct. 665, 106 U.S. 506, 41 L.Ed. 1095 (1897).

of Certiorari will be granted only for compelling reasons.[68] It is very important that the court be consistent in not granting the Writ of Certiorari except in cases involving principles the settlement of which is of importance to the public as distinguished from that of the parties, and in cases where there is a real and embarrassing conflict of opinion and authority between the Circuit Courts of Appeal.[69] Supreme Court Rule 10 states that one of the reasons considered by the Court in deciding whether or not to exercise its discretion over certiorari jurisdiction is whether the underlying decision of the Court of Appeals is in conflict with the decision of another United States Court of Appeals on the same important matter.[70]

Section II of Plaintiff Ahmed's petition attempts to present the argument that the First Circuit Court of Appeal's decision in this case is in conflict with decisions of other United States Courts of Appeal.[71] The Petitioner states:

> "[The Plaintiff] should have been afforded a liberal interpretation of the 'second determination' Becher principle, especially in the face of the other circuit's opinions that would be in disagreement with the First Circuit's."[72]

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[68] Sup. Ct. R. 10.

[69] *Layne & Bowler Corporation v. Western Well Works, Inc., et al.*, 43 S.Ct. 422, 423-424, 261 U.S. 387, 392-393, 67 L.Ed. 712 (1923).

[70] Sup. Ct. R. 10(a).

[71] Petition at pgs. 7, 10.

[72] Petition at pg. 4.

Despite this assertion, Ahmed fails to identify a single case from another circuit court which supports his belief of the existence of a conflict over an important issue of law.

The First Circuit, when considering a Plaintiff's ability to state a claim sounding in RICO, where the predicate acts giving rise to that claim are alleged mail and wire fraud, found:

> "In a RICO mail and wire fraud case, in regards to the details of just when and where the mail and wires were used, we hold that dismissal should not be automatic once the lower court determines that 9(b) was not satisfied. In an appropriate case, where, for example the specific allegations of the Plaintiff make it likely that the Defendant used interstate mail and telecommunications facilities, and the specific information as to use is likely in the exclusive control of the Defendant, the Court should make a second determination as to whether the claim as presented warrants the allowance of discovery and if so, thereafter provide an opportunity to amend the defective complaint."[73]

It is the application of this legal principle by the First Circuit to the underlying case which the Plaintiff claims created a "disagreement" with other courts of appeal.

In an effort to support this alleged conflict, Ahmed cites two district court cases and a bankruptcy case out of the Eastern District of New York.[74] None of these cases,

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[73] *New England Data Services, Inc. v. Becher*, 829 F.2d 286, 290 (1st Cir. 1987).

[74] Petition at pg. 9.

as cited by the Plaintiff, contain any legal issues which are in conflict with the legal standards set out in the *Becher* case. In fact, none of the three cited cases even mention the 'second determination' issue. Two of the cases do not concern RICO causes of action at all,[75] and as such are clearly irrelevant to this petition, and the third case, in which a RICO claim is alleged, has no bearing upon the 'second determination' issue because the case is not considered in a 12(b)(6) context.[76]

What the Plaintiff is doing is attempting to create the appearance of a conflict between the courts of appeal where none exists. The true basis of the Plaintiff's claim to entitlement of certiorari jurisdiction, although it is couched in terms of a conflict, is his disagreement with how the lower courts applied the legal standard applicable to Federal Rule 12(b)(6) to his claim. Plaintiff states:

> "It is unreasonable for the First Circuit to suggest that the pro se complaint does not accord itself favorably with this standard."[77]

The "standard" to which Plaintiff refers is the Rhode Island District Court's application of the Rule 12(b)(6) standard to his original complaint, and the First Circuit Court of Appeal's affirmation of the District Court's dismissal of it.

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[75] In re: *Harvard Knitwear, Inc.*, 153 B.R. 617 (E.D.NY 1993); *Joseph Victori Wines, Inc. v. Vina Canta Carolina S.A., et al.*, 933 F.Supp. 347 (S.D.N.Y. 1996).

[76] *First American Corp., et al. v. Sheikh Zayed Bin Sultan Al-Nahyan, et al.*, 948 F.Supp. 1107 (D.C. 1996).

[77] Petition at pg. 7.

The Plaintiff should not be allowed to conjure up a basis for granting his petition. Despite Plaintiff's assertions, there is no conflict of importance between the courts of appeal due to the issues arising out of this case. What the Plaintiff has alleged is a misapplication of a rule of law to his factual claim. Although Greenwood has no doubt that this alleged misapplication is important to the Plaintiff, it is of little importance to the public as a whole.[78] This Court should not grant the Plaintiff's petition for Writ of Certiorari based upon an alleged misapplication of a properly stated rule of law.[79]

D. GREENWOOD OBJECTS TO SECTION III OF PLAINTIFF'S PETITION IN THAT IT CONTAINS MISSTATEMENTS OF FACT AND INAPPROPRIATE FORM.

Greenwood asserts that the information set forth in his statement of the case contained herein provides an accurate rendition of what the Plaintiff pled in his original complaint as submitted in the District Court. Section III of the Plaintiff's petition is an attempt to mislead the Court, by providing a blurred picture of what was properly before the District Court. The information contained in Section III is a combination of allegations made in Plaintiff's original complaint, Plaintiff's proposed amended complaint, unfounded legal opinions, Plaintiff's

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[78] Sup. Ct. R. 10; *Layne & Bowler Corporation;* 43 S.Ct. at 423-424, 261 U.S. at 392-393, 67 L.Ed. 712.

[79] Sup. Ct. R. 10.

"hyperbolic assertions" and rank speculation. It is virtually impossible to decipher the origins of the information contained in this section of the petition, and Greenwood objects to having to do so in an effort to respond to it.

In addition, Defendant Greenwood objects to Plaintiff's characterization in this section of the petition of the existence of "proven facts."[80] All of the "facts" contained in this section of the petition, at best, were simply allegations of the Plaintiff. In the context of the District Court's consideration of Defendants' 12(b)(6) motion, the allegations from the Plaintiff's original complaint were accepted as true. This, however, clearly does not establish those "facts" as proven. In fact, much of the information that the Plaintiff would have this Court believe to be "proven facts," is in reality unfounded legal opinions, speculation and unreasonable assumptions of the Plaintiff.[81] The Court should disregard these tactics of the Plaintiff.

Greenwood also objects to the Plaintiff's use in Section III of his petition of quotations without providing the slightest indication as to their origin.[82] It is impossible for

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[80] Pet. pages 10-24.

[81] For example, see petition, pages 13, (" . . . the agreement was considered null and void . . . "), 13-14 (" . . . the agreement would have been null and void without ambiguity"), 15 ("Greenwood drafted the 2nd PSA and ran the risk of committing malpractice, . . . "), 17-18 ("An 'earnest money' payment is a unilateral exchange, and there was no reciprocal obligation on the part of the Plaintiff").

[82] Petition, page 11 (footnote 8), 17, 22.

Greenwood to fashion a response to information which simply appears from nowhere, hanging in mid-air.

For these reasons, Plaintiff's petition should be denied.

E. THE ASSERTION IN SECTION III OF PLAINTIFF'S PETITION, THAT THE RHODE ISLAND DISTRICT COURT AND THE FIRST CIRCUIT COURT OF APPEALS COMMITTED ERRONEOUS FACTUAL FINDINGS, DOES NOT PROVIDE A BASIS UPON WHICH THE UNITED STATES SUPREME COURT COULD RELY IN GRANTING CERTIORARI JURISDICTION.

Once the Plaintiff's hyperbolic assertions are weeded from Section III of his petition, it appears that Plaintiff is arguing that the lower courts misapplied the facts before them, did not provide Plaintiff with the reasonable inferences that flowed from those facts, and as a result improperly dismissed a properly plead RICO cause of action. This argument is meritless. The Plaintiff has continuously refused to recognize that the minimal facts which he was able to plead were insufficient to support a colorable RICO claim. Not once through the litigation of this matter through innumerable forums has Plaintiff been able to clearly and concisely explain to any Court, how the alleged facts established the existence of an enterprise between Greenwood, a lawyer, and Mortgage Guarantee and Title Company, a title company hired by a third-party to do title work, nor has Plaintiff been able to clearly explain how this alleged enterprise engaged in a

pattern of racketeering which threatened to continue into the future.

The District Court and Court of Appeals considered the facts before them, they afforded the Plaintiff the leniency to which he was entitled, they drew the inferences which reasonably flowed from those facts, and taking all of that into consideration concluded that the factual basis of a RICO action had not and could not be pled. This Court should be reluctant to grant a petition for Writ of certiorari when the asserted error consists of alleged erroneous factual findings.[83] The Plaintiff's petition for grant of Writ of Certiorari should be denied.

III. CONCLUSION

Plaintiff has failed to establish for this court any basis upon which certiorari jurisdiction could be granted. As such, and for the reasons set forth above, the Plaintiff's petition for Writ of Certiorari should be denied.

Respectfully submitted,

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[83] Sup. Ct. R. 10.